

Honorable J Richard Creatura

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

NATHEN BARTON,

Plaintiff
v.

JOE DELFGAUW, XANADU
MARKETING INC., EXPERIAN
INFORMATION SOLUTIONS INC.,
STARTER HOME INVESTING INC,
JOHN DOE 1-10

Defendants.

Case No.: **3:21-cv-05610-JRC**

BARTON’S
RESPONSE TO MOTION FOR
INVOLUNTARY DISMISSAL DUE
TO ATTEMPT TO COMMIT
FRAUD UPON THE COURT

NOTE ON MOTION CALENDAR:
FEB 25, 2022

PLEASE TAKE NOTICE that Plaintiff Nathen Barton (hereinafter referred to as “Barton”) responds to the defenses’ MOTION FOR INVOLUNTARY DISMISSAL DUE TO PLAINTIFF’S ATTEMPT TO COMMIT FRAUD UPON THE COURT, (“Dkt. 103”), filed by Donna Gibson (“Gibson”) on 1/29/2022.

I. INTRODUCTION

At the heart of this case is a question – Did the Defendants telemarket Barton without consent or invitation, *or* did Barton fraudulently “Opt in” with the hope that the Defendants would telemarket Barton and Barton could sue them.

Dkt. 103 demonstrates the old adage: if the facts support you, pound the facts. If the law supports you, pound the law, and neither supports you, pound the table.

II. ARGUMENT

On the subject of Attorney Fees

Dkt. 103, 4:10-14 is hearsay and should be ignored. Barton’s pleading does state:

“Plaintiff asks for other awards, examples being, but not limited to, . . . attorney fees. . . . Barton has consulted with an attorney in this matter and is obligated to pay that attorney the just and proper rate as agreed to in the attorney engagement agreement”.

Prior to writing this, Barton had an engagement agreement with an attorney, and his attorney has agreed to represent Barton in this matter *if and when* Barton asks.

There is nothing untoward with this arrangement between Barton and the attorney. Washington State Court rule RPC1.2(c) states¹:

“A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent.”

Barton does apologize to the extent that instead of asking for “attorney fees”, Barton could have been more precise and asked for “attorneys fees, if Plaintiff retains an attorney to represent him in this action”. Barton wasn’t given the opportunity to explain “attorney fees” before the instant motion was filed but Barton has subsequently emailed Gibson the clarification as shown in Exhibit C.

¹ https://www.courts.wa.gov/court_rules/pdf/RPC/GA_RPC_01_02_00.pdf

On the subject of IP Geolocation

Gibson is correct that Barton's Dkt. 64 did not contain the full report from [IPLocation.net](https://www.iplocation.net)² that is the basis of Dkt. 103's IP Geolocation fraud allegations, but only published the results of the report (8 GPS coordinates, Dkt. 64, 15:4-8).

Gibson's IP Geolocation fraud allegations are meritless (and unsupported³), and her reasons for making the allegations highlight that her position is meritless.

Gibson starts the controversy at (Dkt. 103, 5:8-12) with the assertion:

"Plaintiff has provided the court with what he claims to be the search results from iplocation.net, Dkt. 64 15: 4-8. As is evident, the GPS coordinates, which Plaintiff claims to be the search results from iplocation.net are not the same as those listed on *the actual report*. [their report is at Dkt. 104 pages 3-9]" (emphasis added).

Gibson is under the impression that the "actual report" is static and does not change with time when the report can and did change significantly in one month. Barton's full report in Exhibit A shows the specific date stamp 11/19/21 at 11:28 AM and Barton's declaration associated with this Response testifies that he saved this report at that time.

Further, two of the results in Exhibit A show the date stamp 2021-11-1:

Geolocation data from [IP2Location](https://www.ip2location.net) (Product: DB6, updated on 2021-11-1)

Geolocation data from [DB-IP](https://www.db-ip.com) (Product: Full, 2021-11-1)

The date stamps in Gibson's Report (Dkt. 104-2) are one month later (2021-12-1):

Geolocation data from [IP2Location](https://www.ip2location.net) (Product: DB6, updated on 2021-12-1)

Geolocation data from [DB-IP](https://www.db-ip.com) (Product: Full, 2021-12-1)

² Dkt. 64 contained data from <https://www.iplocation.net/ip-lookup-obtained-on-11/19/2021>. That full report is attached to this Response as Exhibit A.

³ It is left to the Court to dig into Gibson's Report and find the 'fraud' in Barton's Dkt 64.

Gibson observed that 25% of the IP Geolocation result between her December report and Barton's November report were different, and she was so alarmed that she presumed the differences were due to fraud instead of realizing that the IP Geolocation report her entire counter-claim is built on can and did change significantly in just one month.

Barton has carefully compared Gibson's report (Dkt. 104 pages 3-9, hereinafter "Gibson's Report") with Barton's Report (attached to this Response as Exhibit A)

Of the eight results in Barton's Report, four are an exact match with Gibson's Report and are shown in Appendix A of this Response.

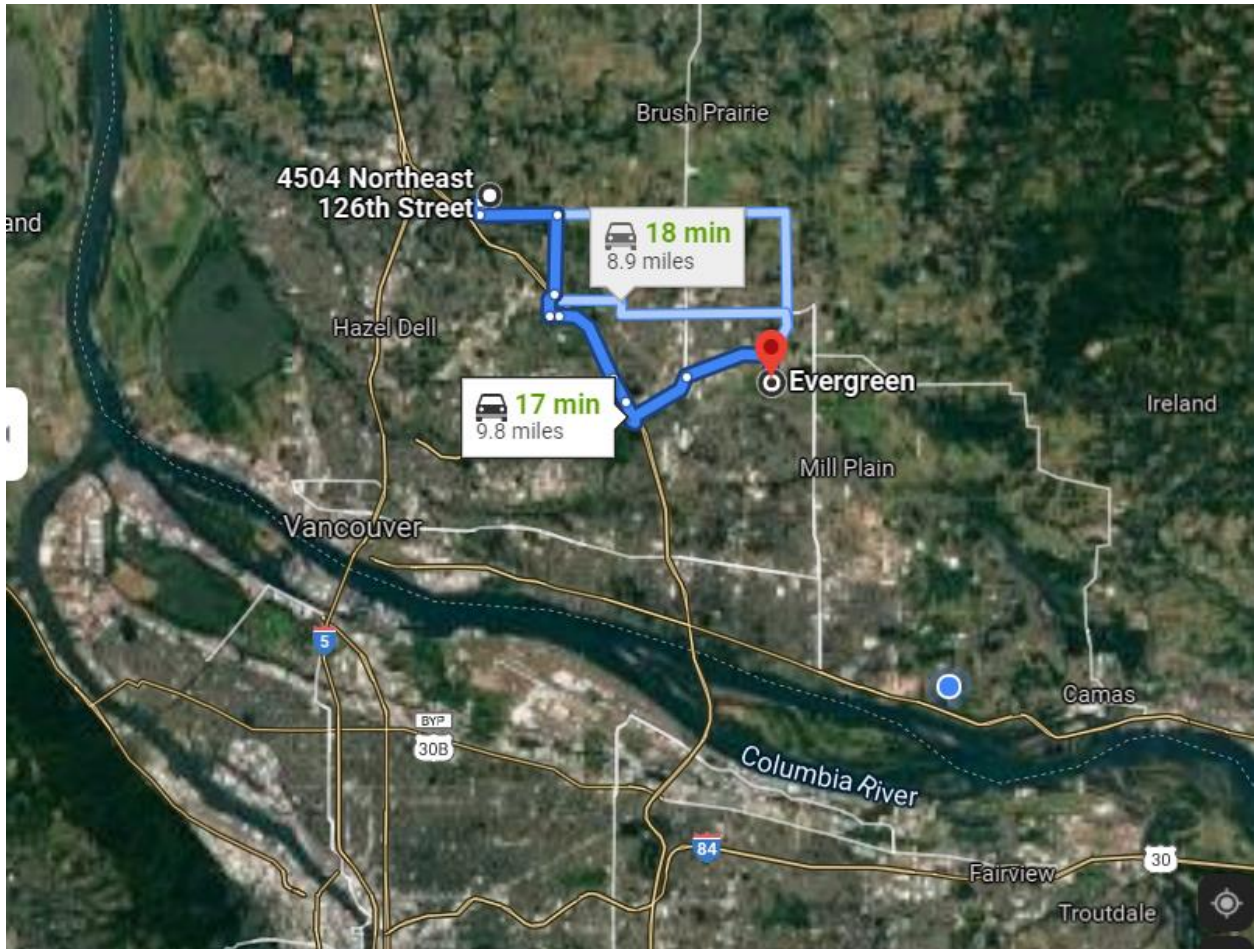
Two cannot be matched because Gibson's Report omits data for *ipinfo.io* and *IPapi.co*.

Two (25%) do not match and the results are enlightening. The first mismatch is between Barton's and Gibson's *IPregistry.co* result:

Geolocation data from IPregistry.co (Product: API, real-time)				Gibson	
IP Address	Country	Region	City		
71.238.123.34	United Statesus	Washington	Vancouver		
ISP	Organization	Latitude	Longitude		
Comcast Cable Communications, LLC	Comcast Cable Communications, Inc. (comcast.net)	45.71266	-122.62391		
Geolocation data from IPregistry.co (Product: API, real-time)				Barton	
IP Address	Country	Region	City		
71.238.123.34	United Statesus	Washington	Vancouver		
ISP	Organization	Latitude	Longitude		
Comcast Cable Communications, LLC	Comcast Cable Communications, LLC	45.66522	-122.52147		

The physical difference is about a 17 minute car ride as shown in the next image.

Gibson's location is further away from Barton's residence.



The second mismatch is substantial – thousands of miles. By Gibson’s own document, (Dkt. 104-2, Page 4 bottom of the page) **IP address 71.238.123.34 is located in New Jersey.**

Geolocation data from IPGeolocation.io (Product: API, real-time)

IP Address	Country	Region	City
71.238.123.34	United States 	New Jersey	Mt Laurel
ISP	Organization	Latitude	Longitude
Comcast Cable Communications, Inc.	Comcast Cable Communications, LLC	39.96657	-74.90327

Of course, New Jersey is thousands of miles away from Barton’s residence.

1 In conclusion, Gibson herself has helped prove the merit of Barton's Dkt. 64 – *Barton's*
 2 *Motion to Take Judicial Notice of IP Address Geolocation Inaccuracy*. In the time span of one
 3 month, 25% of the IP geolocation tools at issue (Dkt 103) have shifted the reported physical
 4 locations by up to thousands of miles.

5 This squares with the Courts own ruling in Dkt. 96, 3:8-15:

6 “Dynamic IP addresses are IP addresses that may be reassigned periodically to different
 7 subscribers. See *Call of the Wild Movie, LLC v. Does 1-1*, 062, 770 F. Supp. 2d 332, 356
 8 (D. D.C. 2011) (“[F]or dynamic IP addresses, a single IP address may be re-assigned to
 many different computers in a short period of time.”).

9 Thus, the IP address identified by plaintiff might have been assigned to multiple
 10 individuals over the last six months and any response Comcast could provide would not
 11 contain information of who used the IP address in or before April 2021, the period he is
 alleged to have opted in.”

12 To the degree that IP Geolocation tools have any accuracy at all, they will constantly be
 13 chasing after different subscribers, and any IP Geolocation report from today does not prove the
 14 physical location of a subscriber in April of 2021.


15 Gibson's entire line of IP Geolocation reasoning, and the basis of her counter-claim, are
 16 misguided.


17 **The Vancouver Mayor's Office Controversy**

18 Dkt. 103 makes the assertion (page 6 lines 3-5):

19 “Plaintiff's statement that the results of the iplocation.net report show that the IP address
 20 can be traced to the office of the Mayor of Vancouver, is yet another example of
 Plaintiff's attempts to commit fraud on the Court.”

21 Instead, Gibson will accidentally prove Barton's case. Both Barton's Report (Exhibit A)
 22 and Gibson's Report agree that IP Geolocation data from **DB-IP** maps IP address 71.238.123.34
 23 to GPS coordinate (45.6257, -122.676):

Geolocation data from DB-IP (Product: Full, 2021-12-1)				Gibson	
IP Address	Country	Region	City		
71.238.123.34	United States 	Washington	Vancouver		
ISP	Organization	Latitude	Longitude		
Comcast Cable Communications, LLC	Comcast Cable Communications, Inc.	45.6257	-122.676		

11/19/21, 11:28 AM				IP Location Finder - Geolocation	
Geolocation data from DB-IP (Product: Full, 2021-11-1)					
IP Address	Country	Region	City		
71.238.123.34	United States 	Washington	Vancouver		
ISP	Organization	Latitude	Longitude		
Comcast Cable Communications, LLC	Comcast Cable Communications, Inc.	45.6257	-122.676		

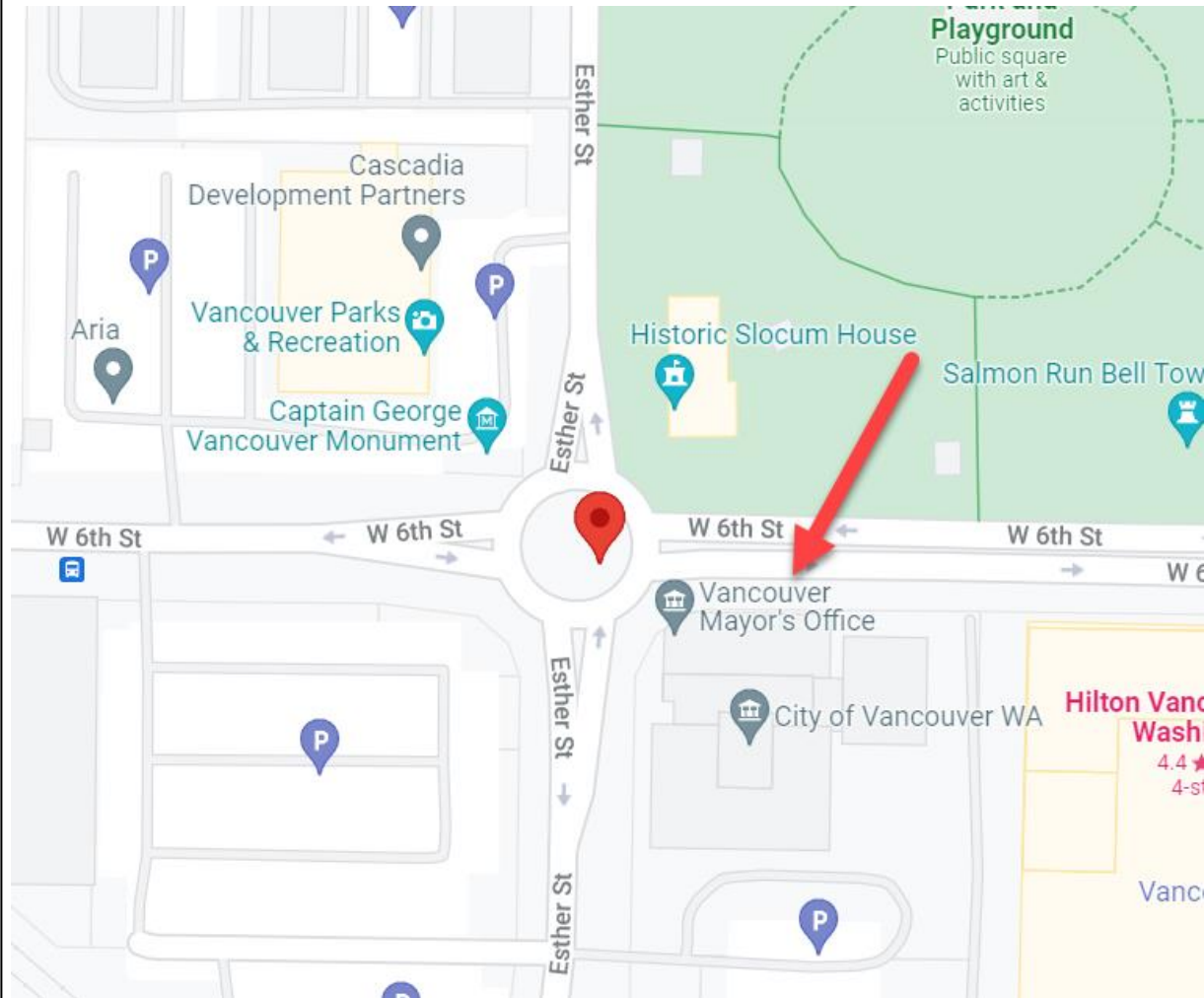
Barton

GPS coordinate (45.6257, -122.676) is this [physical location](#)⁴ (the ‘pin’ in the image on the next page), which is easy for anyone to check (Copy the text inside the quotes “45.6257, -122.676”, paste into Google, and search). It is very evident that the closest location to this GPS coordinate is the Vancouver Mayor’s Office which Gibson did correctly identify as [415 W 6th Street, Vancouver, WA 98660](#) and is shown correctly in the map on the next page (red arrow).

Note that the red pin is not exactly on top of the Mayor’s Office but is on the street just outside. The legend on the map puts the dot about 30 feet away from the Mayor, and seemingly on the basis of that 30 feet, Gibson does not believe there is any connection between (45.6257, -122.676) and the Mayor.

There is great irony here – Gibson argues that (45.6257, -122.676) is so far (30 feet) from the Mayor’s Office that there isn’t a connection – but the entire basis of the Defendants’ counter-claims is that Barton is only 16,000 feet away from yet a different GPS coordinate.

⁴ <https://www.google.com/maps/place/45%C2%B037'32.5%22N+122%C2%B040'33.6%22W/@45.6257515,-122.6768612,18z/data=!4m5!3m4!1s0x0:0x1f04422ef25434bb!8m2!3d45.6257!4d-122.676>



The Defendants did not think through the implications of Dkt. 103. Further, they didn't think through the information in Dkt. 104-2, bottom of Page 5:

"IP-Based Geolocation Accuracy

The Geolocation lookup tool provided on this page is an estimate of where the IP address may be located. The data come from a few IP-Based Geolocation providers, and their accuracy varies depending on how quickly they update their database when changes occur. Since many Internet users are getting their dynamic IP address from their ISP, and most ISPs serve their customers in multiple regions causing Geolocation lookup to be accurate to the region they serve. For example, AT&T in the United States serve their customers in entire USA and the accuracy may be limited to the Country level. Other ISPs may be serving smaller areas, and some ISPs create subnetworks to serve their customers in smaller regions. For this reason, the IP-based Geolocation will be about 99% accurate at the country level while the accuracy of State and City may be at much less accurate level somewhere around 50% range." (emphasis added)

1 This was the entire point of Barton's Dkt. 64.

2 In Gibson's own words (Dkt. 103, 6, 8-12):

3 "If Plaintiff could convince the Court that the IP address could be shown to be off by
4 over 400 miles or associated with a location as recognizable as the office of the Mayor of
Vancouver, the Court would certainly have to take notice of such discrepancies"

5 Gibson's Report shows the IP address is both associated with the Vancouver Mayor's
6 office AND a location thousands of miles away in New Jersey.

7 Delfguaw was served this Lawsuit on 9/7/21. He answered and counter-claimed on
8 10/5/21. On 10/7/2021 Gibson sent Barton the email in Exhibit B that demonstrates she knew
9 the complete telephone number at issue, all the alleged 'opt in' dates, the 'opt in' IP address
10 71.238.123.34, and had done at least some work to trace that IP address.

11 The Defendants' claim that the last "opt in" from 71.238.123.34 occurred on 4/9/2021.

12 There are 152 days between Gibson's email on 10/7/2021 and the last alleged "opt in" of
13 4/9/2021. The paper trail shows that Gibson had at least 28 days to notify Comcast to preserve
14 records related to 71.238.123.34 and then move for a Court Order to obtain those records.

15 By negligence or otherwise, Gibson (an attorney with 19 years of experience who has
16 worked in small and large firms for plaintiffs and defendants)⁵ failed to do so and now those
17 relevant records are lost forever⁶. The Defendants' counterclaim in this Action is meritless.

18 **Delfgauw's Fraud Conviction**

19 Barton raised Delfgauw's 2018 fraud convection because by Federal Rules of Evidence
20 609(a) – Impeachment by Evidence of a Criminal Conviction, the following rules apply for
21 attacking a witness's character for truthfulness by evidence of a criminal conviction:
22

23 ⁵ See Dkt 63, 7:16-18

24 ⁶ See Dkt. 96, 3:6-8. Comcast only retains records for this IP address for 180 days.

(1) for a crime that, in the convicting jurisdiction, was punishable by death or by imprisonment for more than one year

The length of the Delfgauw's incarceration is not relevant – only that the crime was punishable by imprisonment for more than one year. Gibson's acknowledgement that "the Plea Agreement states a range of 15 to 21 years"⁷ checks off one of Barton's required elements for Delfgauw's fraud conviction to be used to impeach his credibility.

III. CONCLUSION

The Defendants are desperate. They rested their entire defense on the premise that Barton "opted in", a defense that has completely fallen apart. The discovery process is chipping away at their untenable position and this wildly unsupported motion for dismissal is a result.

/s/ Nathen Barton

Nathen Barton

2/8/2022

Dated

Nathen Barton
(469) 347 2139
bluwind33@protonmail.com

IV. CERTIFICATE OF SERVICE

I hereby certify that on February 8, 2022, I electronically filed the foregoing with the Clerk of the Court using the Court's CM/ECF System, which will automatically generate a Notice of Electronic Filing to all parties in the case who are registered users of the CM/ECF System, which includes the Defendant. The said Notice of Electronic Filing specifically identifies recipients of electronic notice.


/s/ Nathen Barton

Nathen Barton


⁷ Dkt 103, 6:22

Appendix A


Comparing the Gibson Report (blue) with the Barton Report (red). This part of the report matches.

Geolocation data from ipdata.co (Product: API, real-time)			
IP Address	Country	Region	City
71.238.123.34	United States 	Washington	Vancouver
ISP	Organization	Latitude	Longitude
Comcast Cable Communications, LLC	Not Available	45.6652	-122.5215


Gibson

Geolocation data from ipdata.co (Product: API, real-time)			
IP Address	Country	Region	City
71.238.123.34	United States 	Washington	Vancouver
ISP	Organization	Latitude	Longitude
Comcast Cable Communications, LLC	Not Available	45.6652	-122.5215


Barton



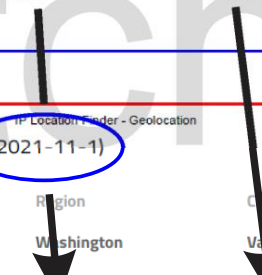
Comparing the Gibson Report (blue) with the Barton Report (red). This part of the report matches.

Geolocation data from DB-IP (Product: Full, 2021-12-1)			
IP Address	Country	Region	City
71.238.123.34	United States 	Washington	Vancouver
ISP	Organization	Latitude	Longitude
Comcast Cable Communications, LLC	Comcast Cable Communications, Inc.	45.6257	-122.676

Gibson

11/19/21, 11:28 AM			
Geolocation data from DB-IP (Product: Full, 2021-11-1)			
IP Address	Country	Region	City
71.238.123.34	United States 	Washington	Vancouver
ISP	Organization	Latitude	Longitude
Comcast Cable Communications, LLC	Comcast Cable Communications, Inc.	45.6257	-122.676

Barton



Comparing the Gibson Report (blue) with the Barton Report (red). This part of the report matches.

Geolocation data from IP2Location (Product: DB6, updated on 2021-12-1)				
Gibson				
IP Address	Country	Region	City	
71.238.123.34	United States of America	Washington	Camas	
ISP	Organization	Latitude	Longitude	
Comcast Cable Communications LLC	Not Available	45.5871	-122.3995	

Geolocation data from IP2Location (Product: DB6, updated on 2021-11-1)				
Barton				
IP Address	Country	Region	City	
71.238.123.34	United States of America	Washington	Camas	
ISP	Organization	Latitude	Longitude	
Comcast Cable Communications LLC	Not Available	45.5871	-122.3995	

Comparing the Gibson Report (blue) with the Barton Report (red). This part of the report matches.

Geolocation data from IPAPI (Product: API, real-time)				
Gibson				
IP Address	Country	Region	City	
71.238.123.34	United Statesus	Washington	Hazel Dell	
ISP	Organization	Latitude	Longitude	
Comcast	Not Available	45.60258102417	-122.51616668701	

Match

Geolocation data from IPAPI (Product: API, real-time)				
Barton				
IP Address	Country	Region	City	
71.238.123.34	United Statesus	Washington	Hazel Dell	
https://www.iplocation.net/ip-lookup				
11/19/21, 11:28 AM				
IP Address	Country	Region	City	
ISP	Organization	Latitude	Longitude	
Comcast	Not Available	45.60258102417	-122.51616668701	

Appendix B

Comparing the Gibson Report (blue) with the Barton Report (red). This part of the report does not match because Gibson's Report omitted data for tool IPapi.co.



Geolocation data from [IPapi.co](#) (Product: API, real-time)

IP Address	Country	Region	City
71.238.123.34	United States	Washington	Vancouver
ISP	Organization	Latitude	Longitude
COMCAST-7922	COMCAST-7922	45.6652	-122.5215

Barton

Comparing the Gibson Report (blue) with the Barton Report (red). This part of the report does not match because Gibson's Report omitted data for tool ipinfo.io.




Geolocation data from [ipinfo.io](#) (Product: API, real-time)

IP Address	Country	Region	City
71.238.123.34	United States	Washington	Vancouver
ISP	Organization	Latitude	Longitude
Comcast Cable Communications, LLC	Comcast Cable Communications, Inc. (comcast.net)	45.6387	-122.6615

Barton

Exhibit A


Geolocation data from [DB-IP](#) (Product: Full, 2021-11-1)

IP Address	Country	Region	City
71.238.123.34	United States 	Washington	Vancouver
ISP	Organization	Latitude	Longitude
Comcast Cable Communications, LLC	Comcast Cable Communications, Inc.	45.6257	-122.676

Geolocation data from [IPRegistry.co](#) (Product: API, real-time)

IP Address	Country	Region	City
71.238.123.34	United States ^{US}	Washington	Vancouver
ISP	Organization	Latitude	Longitude
Comcast Cable Communications, LLC	Comcast Cable Communications, LLC	45.66522	-122.52147

Geolocation data from [IPGeolocation.io](#) (Product: API, real-time)

IP Address	Country	Region	City
71.238.123.34	United States 	Oregon	Woodburn
ISP	Organization	Latitude	Longitude
Comcast	Comcast Cable Communications, LLC	45.10847	-122.82889

Geolocation data from [IPapi.co](#) (Product: API, real-time)


IP Address	Country	Region	City
71.238.123.34	United States	Washington	Vancouver
ISP	Organization	Latitude	Longitude
COMCAST-7922	COMCAST-7922	45.6652	-122.5215

Geolocation data from [IPAPI](#) (Product: API, real-time)

IP Address	Country	Region	City
71.238.123.34	United States ^{US}	Washington	Hazel Dell

IP Address	Country	Region	City
ISP	Organization	Latitude	Longitude
Comcast	Not Available	45.60258102417	-122.51616668701

Geolocation data from [ipdata.co](#) (Product: API, real-time)

IP Address	Country	Region	City
71.238.123.34	United States 	Washington	Vancouver
ISP	Organization	Latitude	Longitude
Comcast Cable Communications, LLC	Not Available	45.6652	-122.5215

Would you like to help us improve ip-to-location data by providing your feedback?

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1/15



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In 1999 it was discovered that every single Hotmail account could be accessed by using the password "Eh."



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IP-Based Geolocation Accuracy

The Geolocation lookup tool provided on this page is an estimate of where the IP address may be located. The data come from a few IP-Based Geolocation providers, and their accuracy varies depending on how quickly they update their database when changes occur. Since many Internet

users are getting their dynamic IP address from their [ISP](#), and most ISPs serve their customers in multiple regions causing Geolocation lookup to be accurate to the region they serve. For example, AT&T in the United States serve their customers in entire USA and the accuracy may be limited to the Country level. Other ISPs may be serving smaller areas, and some ISPs create subnetworks to serve their customers in smaller regions. For this reason, the IP-based Geolocation will be about 99% accurate at the country level while the accuracy of State and City may be at much less accurate level somewhere around 50% range.

For more information about Geolocation Accuracy, please read [How accurate is IP-based Geolocation lookup?](#)

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Exhibit B

EXHIBIT B
CASE 3:21-CV-05610-JRC

NATHEN BARTON
4618 NW 11TH CIR
CAMAS WA 98607



N B <farmersbranch2014@gmail.com>

Barton v Delfgauw et al - anti-SLAPP notice

DONNA GIBSON <donna@donnagibsonlaw.com>
To: Nathen Barton <farmersbranch2014@gmail.com>

Thu, Oct 7, 2021 at 2:41 PM

Mr. Barton. Although you purposely did not put the alleged 360 number in your complaint, I have researched other complaints you have filed and numbers you have used. My client has provided me the following information:

Mr. Barton opted into the marketing campaigns using reissued phone number (360) 910-1019 and the information of Ivette Jimenez – Martinez the former owner of that number. I took the liberty of contacting Ms. Martinez, who informed me that this is her former number and that she has not had access to it since 2020 when she and her former husband divorced. See email attached. This coincides with what Beenverified reported that the number had not been seen in use by her since September 2019. It appears that after Mr. Barton received this number, he placed it on the do not call list February 16, 2021. He then waited a month and began opting into campaigns April 1, 2021, using Ivette's information. The opt-in spread sheet that I sent you shows that he opted in 6 times on 4 different dates. Over half the messages he received came on the same days as the opt-ins were made.

Opt-in	Message
4/1/21	4/1/21
4/9/21	4/9/21
4/13/21	4/13/21
4/30/21	4/30/21

The IP address from which the opt-ins were received was 71.238.123.34 and indicated in the "Opt in Ivette" spreadsheet I sent to you. As shown on other documents previously sent, that IP address can be traced back to Camas, Washington, where Mr. Barton lives.

Quick timeline

End 2019 - start 2020:	Ivette Jimenez – Martinez gives up phone number
February 16, 2021:	Barton places same phone number on do not call list
February 17, 2021:	Barton sent email stating he has a mission to get rid of robocalls (in the SAHA case)
February 18, 2021:	Barton files 3 cases in state court, which have since been followed by 17 more
April 1, 2021:	Barton starts opting into marketing campaigns using Ivette's name
April 1, 2021:	Barton starts receiving messages 3 of which reference Ivette
June 4, 2021:	Barton files first of 9 federal cases seeking damages for TCPA violations

Nathen Barton knowingly made material representations which were false with the intent that the defendants would act upon the false representations. Defendants acted in reliance of the false representations and defendants have suffered

injury as a result.

[Quoted text hidden]

--

Donna Gibson
Law Office of Donna Beasley Gibson

206-242-5529 phone
425-332-7068 fax

Exhibit C



N B <farmersbranch2014@gmail.com>

Barton v Delfgauw and SAHA - attorney fees

Nathen Barton <farmersbranch2014@gmail.com>
To: DONNA GIBSON <donna@donnagibsonlaw.com>

Mon, Feb 7, 2022 at 7:06 PM

Hello,

I want to give a clarification. My request for attorney fees in the complaints should have read "Attorneys fees, if Plaintiff retains an attorney to represent him in this action". I thought what I put in the complaint would be understood as this, but to the extent it is not clear, I hope this email addresses the confusion.

You can hang on to this email, I would only claim attorney fees if and when an attorney fully represents me, AND there was a legal reason to ask for attorney fees.

Nathen